

**BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation Against: )**

**HANYA BARTH, M.D. )**

**File No. 03-2005-165519**

**Physician's and Surgeon's )  
Certificate No. A31974 )**

**Respondent. )**

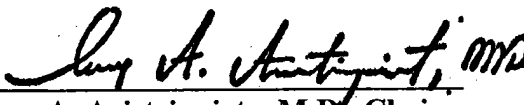
**DECISION**

**The attached Stipulated Settlement and Decision is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on January 16, 2007.**

**IT IS SO ORDERED December 14, 2006.**

**MEDICAL BOARD OF CALIFORNIA**

By:   
Cesar A. Aristeiguieta, M.D., Chair  
Panel A  
Division of Medical Quality

1 BILL LOCKYER, Attorney General  
of the State of California  
2 JOSE R. GUERRERO  
Supervising Deputy Attorney General  
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7 Attorneys for Complainant  
8  
9

10 **BEFORE THE**  
11 **DIVISION OF MEDICAL QUALITY**  
12 **MEDICAL BOARD OF CALIFORNIA**  
13 **DEPARTMENT OF CONSUMER AFFAIRS**  
14 **STATE OF CALIFORNIA**

15 **In the Matter of the Accusation Against:**

16 **HANYA BARTH, M.D.**  
1200 Howard Street  
San Francisco, CA 94103

17 Physician and Surgeon's Certificate  
18 No. A31974

19  
20 Respondent,  
21

Case No: 03-2005-165519

22 **STIPULATED SETTLEMENT**  
23 **AND DECISION**

24 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to  
25 the above-entitled proceedings, the following:

26 1. Complainant David T. Thornton, is the Executive Director of the  
27 Medical Board of California, Department of Consumer Affairs ("Board") and is represented by  
28 Bill Lockyer, Attorney General of the State of California and by Lawrence A. Mercer and Jane  
Zack Simon, Deputy Attorneys General.

2. Hanya Barth, M.D. ("respondent") is represented by Patrick Hallinan and  
Hallinan and Wine, 345 Franklin Street, San Francisco, CA. 94102. Respondent has been

1 advised by her attorney, and is fully aware of the effect of this stipulation.

2 3. At all times relevant herein, respondent has been licensed by the Medical  
3 Board of California under License No. A31974.

4 4. Accusation No. 03-2005-165519 (hereinafter the "Accusation") was filed  
5 before the Division and is currently pending against respondent. The Accusation, together with  
6 all other statutorily required documents, was duly served on respondent on March 24, 2006, and  
7 respondent filed a Notice of Defense contesting the Accusation. A copy of the Accusation is  
8 attached as Exhibit A and incorporated herein by reference.

9 5. Respondent has carefully read, been fully advised by her counsel, and  
10 understands the charges and allegations in the Accusation and the effects of this Stipulated  
11 Settlement and Disciplinary Order.

12 6. Respondent has discussed with counsel and understands that the charges  
13 and allegations in the Accusation, if proven at a hearing, constitute cause for imposing discipline  
14 upon her license. Respondent is fully aware of her legal rights and that, but for this Stipulation,  
15 she would be entitled: to a hearing on the charges and allegations in the Accusation; to be  
16 represented by counsel, at her own expense, in all proceedings in this matter; to confront and  
17 cross-examine the witnesses against her; to present evidence on her own behalf and to the  
18 issuance of subpoenas to compel the attendance of witnesses and the production of documents; to  
19 reconsideration and appeal of an adverse decision; and all other rights accorded pursuant to the  
20 California Administrative Procedure Act and other applicable laws.

21 7. With these rights in mind, respondent freely, voluntarily, knowingly and  
22 intelligently waives and gives up each and every right set forth above.

23 8. Respondent hereby gives up her right to contest the charges set forth in the  
24 Accusation, and agrees to be bound by the Division's imposition of discipline as set forth in the  
25 Disciplinary Order below.

26 9. The admissions made by respondent herein are only for the purposes of this  
27 proceeding, or any other proceedings in which the Division of Medical Quality, Medical Board of  
28 California, or any other professional licensing agency is involved, and shall not be admissible in

1 any other criminal or civil proceeding.

2 10. This stipulation shall be subject to the approval of the Division.

3 Respondent understands and agrees that the Medical Board's staff and counsel for complainant  
4 may communicate directly with the Division regarding this stipulation and settlement, without  
5 notice to or participation by respondent or her counsel. If the Division fails to adopt this  
6 Stipulated Settlement as its Order, the stipulation, except for this paragraph, shall be of no force or  
7 effect and shall be inadmissible in any legal action between the parties and the division shall not  
8 be disqualified from further action by having considered this settlement.

9 11. The parties agree that facsimile copies of this Stipulated Settlement and  
10 Disciplinary Order, including facsimile signatures, shall have the same force and effect as  
11 originals.

12 12. In consideration of the foregoing admissions and stipulations, the parties  
13 agree that the Division shall, without further notice or formal proceeding, issue and enter the  
14 following Disciplinary Order:

15 **DISCIPLINARY ORDER**

16 Based upon these recitals, IT IS HEREBY STIPULATED AND AGREED that the  
17 Division will issue and enter the following Order and Decision:

18 Physician's and Surgeon's Certificate No. A31974 issued to respondent Hanya  
19 Barth, M.D. is revoked. However, the revocation is stayed and respondent is placed on probation  
20 for four (4) years upon the following terms and conditions.

21 13. **Clinical Training Program:** Within 60 calendar days of the effective date  
22 of this Decision, respondent shall enroll in a clinical training or educational program equivalent to  
23 the Physician Assessment and Clinical Education Program (PACE) offered at the University of  
24 California - San Diego School of Medicine ("Program"). The Program shall consist of a  
25 Comprehensive Assessment program comprised of a two-day assessment of respondent's physical  
26 and mental health; basic clinical and communication skills common to all clinicians; and medical  
27 knowledge, skill and judgment pertaining to respondent's specialty or sub-specialty, and at  
28 minimum, a 40 hour program of clinical education in the area of practice in which respondent was

1 alleged to be deficient and which takes into account data obtained from the assessment,  
2 Decision(s), Accusation(s), and any other information that the Division or its designee deems  
3 relevant. Respondent shall pay all expenses associated with the clinical training program. Based  
4 on respondent's performance and test results in the assessment and clinical education, the Program  
5 will advise the Division or its designee of its recommendation(s) for the scope and length of any  
6 additional educational or clinical training, treatment for any medical condition, treatment for any  
7 psychological condition, or anything else affecting respondent's practice of medicine. Respondent  
8 shall comply with Program recommendations. At the completion of any additional educational or  
9 clinical training, respondent shall submit to and pass an examination. The Program's  
10 determination whether or not respondent passed the examination or successfully completed the  
11 Program shall be binding. Respondent shall complete the Program not later than nine months  
12 after respondent's initial enrollment unless the Division or its designee agrees in writing to a later  
13 time for completion. Failure to participate in and complete successfully all phases of the clinical  
14 training program outlined above is a violation of probation. If respondent fails to successfully  
15 complete the clinical training program within the designated time period, respondent shall cease  
16 the practice of medicine within 72 hours after being notified by the Division or its designee that  
17 respondent failed to successfully complete the clinical training program.

18           14.     **Prescribing Practices Course:** Within 90 calendar days of the effective  
19 date of this Decision, respondent shall enroll in a course in prescribing practices, at respondent's  
20 expense, approved in advance by the Division or its designee. Failure to successfully complete  
21 the course during the first 9 months of probation is a violation of probation. A prescribing  
22 practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the  
23 effective date of the Decision may, in the sole discretion of the Division or its designee, be  
24 accepted towards the fulfillment of this condition if the course would have been approved by the  
25 Division or its designee had the course been taken after the effective date of this Decision.  
26 Respondent shall submit a certification of successful completion to the Division or its designee  
27 not later than 15 calendar days after successfully completing the course, or not later than 15  
28 calendar days after the effective date of the Decision, whichever is later.

1           15.     **Medical Record Keeping Course:** Within 90 calendar days of the  
2 effective date of this decision, respondent shall enroll in a course in medical record keeping, at  
3 respondent's expense, approved in advance by the Division or its designee. Failure to successfully  
4 complete the course during the first 9 months of probation is a violation of probation. A medical  
5 record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior  
6 to the effective date of the Decision may, in the sole discretion of the Division or its designee, be  
7 accepted towards the fulfillment of this condition if the course would have been approved by the  
8 Division or its designee had the course been taken after the effective date of this Decision.  
9 Respondent shall submit a certification of successful completion to the Division or its designee  
10 not later than 15 calendar days after successfully completing the course, or not later than 15  
11 calendar days after the effective date of the Decision, whichever is later.

12           16.     **Practice Monitoring:** Within 30 calendar days of the effective date of  
13 this Decision and Order, respondent shall submit to the Division or its designee for prior approval  
14 as a practice monitor the name and qualifications of one or more licensed physicians and surgeons  
15 whose licenses are valid and in good standing, and who are preferably American Board of  
16 Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or  
17 personal relationship with respondent, or other relationship that could reasonably be expected to  
18 compromise the ability of the monitor to render fair and unbiased reports to the Division,  
19 including but not limited to any form of bartering, shall be in respondent's field of practice, and  
20 must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

21           The Division or its designee shall provide the approved monitor with copies of the  
22 Decision and Accusation and a proposed monitoring plan. Within 15 calendar days of receipt of  
23 the Decision and Order, Accusation, and proposed monitoring plan, the monitor shall submit a  
24 signed statement that the monitor has read the Decision and Order and Accusation, fully  
25 understands the role of a monitor, and agrees with the proposed monitoring plan.

26           Within 60 calendar days of the effective date of this Decision and Order, and  
27 continuing throughout probation, respondent's practice shall be monitored by the approved  
28 monitor. Respondent shall make all records available for immediate inspection and copying on

1 the premises by the monitor at all times during business hours and shall retain the records for the  
2 entire term of probation.

3 The monitor(s) shall submit a quarterly written report to the Division or its  
4 designee which includes an evaluation of respondent's performance, indicating whether  
5 respondent's practices are within the standards of practice of medicine and whether respondent is  
6 practicing medicine safely.

7 It shall be the sole responsibility of respondent to ensure that the monitor submits  
8 the quarterly written reports to the Division or its designee within 10 calendar days after the end  
9 of the preceding quarter.

10 If the monitor resigns or is no longer available, respondent shall, within 5 calendar  
11 days of such resignation or unavailability, submit to the Division or its designee, for prior  
12 approval, the name and qualifications of a replacement monitor who will be assuming that  
13 responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement  
14 monitor within 60 days of the resignation or unavailability of the monitor, respondent shall be  
15 suspended from the practice of medicine until a replacement monitor is approved and prepared to  
16 assume immediate monitoring responsibility. Respondent shall cease the practice of medicine  
17 within 3 calendar days after being so notified by the Division or designee.

18 In lieu of a monitor, respondent may participate in a professional enhancement  
19 program equivalent to the one offered by the Physician Assessment and Clinical Education  
20 Program at the University of California, San Diego School of Medicine, that includes, at  
21 minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of  
22 professional growth and education. Respondent shall participate in the professional enhancement  
23 program at respondent's expense during the term of probation.

24 Failure to maintain all records, or to make all appropriate records available for  
25 immediate inspection and copying on the premises, or to comply with this condition as outlined  
26 above is a violation of probation.

27 17. **Continuing Medical Education:** Within 60 calendar days of the effective  
28 date of this Decision, and on an annual basis thereafter, respondent shall submit to the Division or

1 its designee for its prior approval an educational program(s) or course(s) which shall not be less  
2 than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall  
3 be aimed at correcting any areas of deficient practice or knowledge and shall be Category I  
4 certified, limited to classroom, conference, or seminar settings. The educational program(s) or  
5 course(s) shall be at respondent's expense and shall be in addition to the Continuing Medical  
6 Education (CME) requirements for renewal of licensure. Following the completion of each  
7 course, the Division or its designee may administer an examination to test respondent's knowledge  
8 of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40  
9 hours were in satisfaction of this condition.

#### 10 **STANDARD TERMS AND CONDITIONS**

11 18. **Notification:** Prior to engaging in the practice of medicine the respondent  
12 shall provide a true copy of the Decision and Accusation to the Chief of Staff or the Chief  
13 Executive Officer at every hospital where privileges or membership are extended to respondent, at  
14 any other facility where respondent engages in the practice of medicine, including all physician  
15 and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every  
16 insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall  
17 submit proof of compliance to the Division or its designee within 15 calendar days.  
18 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

19 19. **Supervision of Physician Assistants:** During probation, respondent is  
20 prohibited from supervising physician assistants.

21 20. **Obey All Laws:** Respondent shall obey all federal, state and local laws, all  
22 rules governing the practice of medicine in California and remain in full compliance with any  
23 court ordered criminal probation, payments, and other orders.

24 21. **Quarterly Declarations:** Respondent shall submit quarterly declarations  
25 under penalty of perjury on forms provided by the Division, stating whether there has been  
26 compliance with all the conditions of probation. Respondent shall submit quarterly declarations  
27 not later than 10 calendar days after the end of the preceding quarter.

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1           22.    **Probation Unit Compliance:** Respondent shall comply with the  
2 Division's probation unit. Respondent shall, at all times, keep the Division informed of  
3 respondent's business and residence addresses. Changes of such addresses shall be immediately  
4 communicated in writing to the Division or its designee. Under no circumstances shall a post  
5 office box serve as an address of record, except as allowed by Business and Professions Code  
6 section 2021(b). Respondent shall not engage in the practice of medicine in respondent's place of  
7 residence. Respondent shall maintain a current and renewed California physician's and surgeon's  
8 license. Respondent shall immediately inform the Division or its designee, in writing, of travel to  
9 any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than  
10 thirty (30) calendar days.

11           23.    **Interview with the Division or it's Designee:** Respondent shall be  
12 available in person for interviews either at respondent's place of business or at the probation unit  
13 office, with the Division or its designee upon request at various intervals and either with or  
14 without prior notice throughout the term of probation.

15           24.    **Residing or Practicing Out-of-State:** In the event respondent should  
16 leave the State of California to reside or to practice respondent shall notify the Division or its  
17 designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is  
18 defined as any period of time exceeding thirty calendar days in which respondent is not engaging  
19 in any activities defined in sections 2051 and 2052 of the Business and Professions Code.  
20 All time spent in an intensive training program outside the State of California which has been  
21 approved by the Division or its designee shall be considered as time spent in the practice of  
22 medicine within the State. A Board-ordered suspension of practice shall not be considered as a  
23 period of non-practice.

24           Periods of temporary or permanent residence or practice outside California will not  
25 apply to the reduction of the probationary term. Periods of temporary or permanent residence or  
26 practice outside California will relieve respondent of the responsibility to comply with the  
27 probationary terms and conditions with the exception of this condition and the following terms  
28 and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

1 Respondent's license shall be automatically canceled if respondent's periods of temporary or  
2 permanent residence or practice outside California totals two years. However, respondent's license  
3 shall not be canceled as long as respondent is residing and practicing medicine in another state of  
4 the United States and is on active probation with the medical licensing authority of that state, in  
5 which case the two year period shall begin on the date probation is completed or terminated in that  
6 state.

7           25.     **Failure to Practice Medicine - California Resident:** In the event  
8 respondent resides in the State of California and for any reason respondent stops practicing  
9 medicine in California, respondent shall notify the Division or its designee in writing within 30  
10 calendar days prior to the dates of non-practice and return to practice. Any period of non- practice  
11 within California, as defined in this condition, will not apply to the reduction of the probationary  
12 term and does not relieve respondent of the responsibility to comply with the terms and conditions  
13 of probation. Non-practice is defined as any period of time exceeding thirty calendar days in  
14 which respondent is not engaging in any activities defined in sections 2051 and 2052 of the  
15 Business and Professions Code. All time spent in an intensive training program which has been  
16 approved by the Division or its designee shall be considered time spent in the practice of  
17 medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in  
18 compliance with any other condition of probation, shall not be considered a period of  
19 non-practice.

20           Respondent's license shall be automatically canceled if respondent resides in  
21 California and for a total of two years, fails to engage in California in any of the activities  
22 described in Business and Professions Code sections 2051 and 2052.

23           26.     **Completion of Probation:** Respondent shall comply with all financial  
24 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the  
25 completion of probation. Upon successful completion probation, respondent's certificate shall be  
26 fully restored.

27           27.     **Violation of Probation:** Failure to fully comply with any term or  
28 condition of probation is a violation of probation. If respondent violates probation in any respect,

1 the Division, after giving respondent notice and the opportunity to be heard, may revoke probation  
2 and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke  
3 Probation, or an Interim Suspension Order is filed against respondent during probation, the  
4 Division shall have continuing jurisdiction until the matter is final, and the period of probation  
5 shall be extended until the matter is final.

6           28.    **License Surrender:** Following the effective date of this Decision, if  
7 respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the  
8 terms and conditions of probation, respondent may request the voluntary surrender of respondent's  
9 license. The Division reserves the right to evaluate respondent's request and to exercise its  
10 discretion whether or not to grant the request, or to take any other action deemed appropriate and  
11 reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall  
12 within 15 calendar days deliver respondent's wallet and wall certificate to the Division or its  
13 designee and respondent shall no longer practice medicine. Respondent will no longer be subject  
14 to the terms and conditions of probation and the surrender of respondent's license shall be deemed  
15 disciplinary action. If respondent re-applies for a medical license, the application shall be treated  
16 as a petition for reinstatement of a revoked certificate.

17           29.    **Probation Monitoring Costs:** Respondent shall pay the costs associated  
18 with probation monitoring each and every year of probation, as designated by the Division. The  
19 costs are currently \$3,173.00, and may be adjusted on an annual basis. Such cost shall be payable  
20 to the Medical Board of California and delivered to the Division or its designee no later than  
21 January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a  
22 violation of probation.

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**ACCEPTANCE**

I have carefully read the above Stipulated Settlement and Decision. I understand the effect this stipulation will have on my license and agree to be bound thereby. I enter into this Stipulated Settlement and Decision knowingly, voluntarily, freely and intelligently. I agree that a FAX copy of my signature shall have the same force and effect as an original.

DATED: 11-14-06



**HANYA BARTH, M.D.**  
Respondent

**APPROVAL**

I have fully discussed with respondent the terms and conditions and other matters contained in the above Stipulated Settlement and Decision/ and approve its form and content.

DATED: 11/13/06



**PATRICK HALLINAN**  
Hallinan and Wine

Attorney for Respondent

**ENDORSEMENT**

The foregoing Stipulated Settlement and Decision is hereby respectfully submitted for consideration of the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs.

DATED: 11/17/2006

**BILL LOCKYER, Attorney General**  
of the State of California



**LAWRENCE A. MERCER**  
**JANE ZACK SIMON**  
Deputy Attorneys General

Attorneys for Complainant

**EXHIBIT A**

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO *March 24 2006*  
BY *Aslan G. Ayupov* ANALYST

1 BILL LOCKYER, Attorney General  
of the State of California  
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13 In the Matter of the Accusation Against:

Case No. 03-2005-165519

14 **HANYA BARTH, M.D.**  
1200 Howard Street  
15 San Francisco, CA 94103

**ACCUSATION**

16 Physician's and Surgeon's Certificate No.  
A31974

17 Respondent.  
18

19  
20 Complainant alleges:

21 **PARTIES**

22 1. David T. Thornton (Complainant) brings this Accusation ("Accusation")  
23 solely in his official capacity as the Executive Director of the Medical Board of California,  
24 Department of Consumer Affairs.

25 2. On or about March 7, 1978, the Medical Board of California issued  
26 Physician's and Surgeon's Certificate Number A31974 to Hanya Barth, M.D. (Respondent). The  
27 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the  
28 charges brought herein and will expire on June 30, 2007, unless renewed.

## JURISDICTION

3. This Accusation is brought before the Division of Medical Quality, Medical Board of California (Division), under the authority of the following sections of the Business and Professions Code (Code).

4. Section 2003 of the Code states: "The board shall consist of the following two divisions: a Division of Medical Quality, and a Division of Licensing."

5. Section 2004 of the Code states:

"The Division of Medical Quality shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a medical quality review committee, the division, or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board."

6. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Division deems proper.

7. Section 2234 of the Code states:

"The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical Practice Act].

1           "(b) Gross negligence.

2           "(c) Repeated negligent acts. To be repeated, there must be two or more  
3 negligent acts or omissions. An initial negligent act or omission followed by a separate  
4 and distinct departure from the applicable standard of care shall constitute repeated  
5 negligent acts.

6           "(1) An initial negligent diagnosis followed by an act or omission medically  
7 appropriate for that negligent diagnosis of the patient shall constitute a single negligent  
8 act.

9           "(2) When the standard of care requires a change in the diagnosis, act, or  
10 omission that constitutes the negligent act described in paragraph (1), including, but not  
11 limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's  
12 conduct departs from the applicable standard of care, each departure constitutes a separate  
13 and distinct breach of the standard of care.

14           "(d) Incompetence.

15           "(e) The commission of any act involving dishonesty or corruption which is  
16 substantially related to the qualifications, functions, or duties of a physician and surgeon.

17           "(f) Any action or conduct which would have warranted the denial of a  
18 certificate.

19           "(g) The practice of medicine from this state into another state or country without  
20 meeting the legal requirements of that state or country for the practice of  
21 medicine...."

22           9. Section 2266 of the Code provides:

23           "The failure of a physician and surgeon to maintain adequate and accurate records  
24 relating to the provision of services to their patients constitutes unprofessional conduct."

25           **FIRST CAUSE FOR DISCIPLINARY ACTION**

26           (Patient T.R.)

27           (Unprofessional Conduct/Gross Negligence/Negligence/Incompetence)

28           12. Respondent is subject to disciplinary action under sections 2234, and/or

1 2234(b), and/or 2234(c), and/or 2234(d) of the Code in that respondent committed unprofessional  
2 conduct, and/or was grossly and/or simply negligent, and/or incompetent in the care and treatment  
3 of Patient T.R.<sup>1</sup> The circumstances are as follows:

4           A.     Respondent completed medical school in 1975. Her field of practice is  
5 family practice and internal medicine; she is not board certified. Between 1992 and 2003,  
6 respondent did not engage in the practice of medicine. She returned to practice on a part-  
7 time basis in 2003, and in 2004, she opened an office in San Francisco, California,  
8 specializing in medical marijuana evaluations and mental/physical wellness counseling.

9           B.     On or about July 31, 2004, Patient T.R., an 18 year old male, came to  
10 respondent's office seeking a recommendation for the use of medical marijuana. T.R. had  
11 recently graduated from high school, and planned to attend college in September. T.R.  
12 complained of insomnia, depression and decreased appetite. T.R. advised respondent that  
13 he had begun to treat his conditions with marijuana in May, 2004, and that it was helpful to  
14 him. He reported his usage as 3 grams per week. Respondent took a medical history, and  
15 conducted a brief physical examination. Her physical examination did not include a  
16 thorough mental status or neurological examination. Respondent diagnosed T.R. with  
17 depression, insomnia and lack of appetite, and issued a recommendation for a two month  
18 trial of marijuana. Respondent recommended that T.R. seek counseling, and recommended  
19 a follow up appointment in two months.

20           C.     Respondent next saw T.R. on October 1, 2004. He reported that he had  
21 dropped out of college after twenty days, that he was not able to regularly obtain marijuana  
22 while at college. He had been prescribed Ambien and Prozac by a physician at college, but  
23 stated that they didn't help him. He had resumed his marijuana use after he returned from  
24 college, and reported that marijuana helped him sleep and helped with his depression. His  
25 marijuana use was up to 7 grams per week. Respondent took vital signs, but does not  
26

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27 1. The patient's name is abbreviated to protect privacy. Full information will be provided  
28 to the respondent upon timely request for discovery.

1 appear to have conducted any other physical examination or mental status examination,  
2 except to note that T.R. "Appears very anxious here- palms sweating- agitated."  
3 Respondent again recommended counseling, and suggested that T.R. see another  
4 psychiatrist and consider Prozac again. She noted a plan to obtain T.R.'s medical records.  
5 Respondent issued a three month recommendation for medical marijuana.

6 D. T.R. returned to respondent's office on December 28, 2004. He reported  
7 that he felt well, and that based on his Internet research, he believed he had a seasonal  
8 affective disorder. Except for vital signs, no physical exam was conducted, and the mental  
9 status examination is limited to a notation that T.R. was "very nervous very articulate."  
10 Respondent issued a medical marijuana recommendation for one year, based on a diagnosis  
11 of anxiety, insomnia and rule out seasonal affective disorder.

12 E. On March 29, 2005, respondent's chart states that she spoke with T.R.'s  
13 parents and his psychiatrist, Rebecca Powers, who felt that marijuana was having a  
14 negative effect on T.R. T.R.'s parents advised respondent that their son was seeking  
15 employment at a cannabis dispensary, and that marijuana was affecting his ability to make  
16 good choices. They asked respondent to revoke her recommendation for marijuana.

17 F. On April 6, 2005, respondent saw T.R. for a final visit. T.R. advised  
18 respondent that his new psychiatrist believed his problems were from marijuana, and that  
19 he was taking Lexapro. Again, except for vital signs and a notation "(illegible).... hands  
20 clenched, sweating. Very little insight into himself currently. States not depressed or  
21 anxious and all o.k." there is no indication that respondent conducted a physical or mental  
22 status examination, or that she conducted any work up or assessment to determine whether  
23 marijuana might be exacerbating T.R.'s mental instability. Her assessment was possible  
24 clinical anxiety and seasonal affective disorder, and her plan was to continue with  
25 psychiatrist. There is no indication that respondent discussed with T.R. the concerns of his  
26 treating psychiatrist or his parents, or that she attempted to dissuade him from using  
27 marijuana.

1           G.     Contained within respondent medical record for T.R. is an undated Social  
2     Phobia Self-Test, a print out of an Internet chat in which T.R. was a participant, an  
3     authorization for respondent and T.R.'s treating psychiatrist to exchange information about  
4     T.R., an authorization for release of records dated 12/23/2004, and medical records for  
5     T.R. going back to 1998. The records reveal that on November 8, 2004, T.R. was seen after  
6     he exhibited bizarre thoughts and delusions and paranoia. The health care provider who  
7     saw T.R. on that date thought T.R. was in the midst of a psychotic or bipolar episode, and  
8     T.R. was hospitalized. On May 21, 2004, T.R.'s records show that he was seen for "altered  
9     consciousness" and was believed to have ingested 21 capsules of diphenhydramine (an  
10    antihistamine) and was sent to the emergency room. Although these materials were  
11    included in respondent's chart for T.R., there is no indication that she considered them at  
12    any time during her treatment of T.R.

13           H.     Dr. Powers contacted respondent by telephone on March 29, 2005. Dr.  
14    Powers explained to respondent the reasons she believed marijuana was contraindicated for  
15    T.R., and that marijuana could make his depression worse and cause his psychosis. Dr.  
16    Powers advised respondent that she had diagnosed T.R. with depression with psychotic  
17    features, and that T.R.'s psychosis coincided with when he began to use marijuana. She  
18    further advised respondent that marijuana counteracted the antidepressant and antipsychotic  
19    medication she prescribed to T.R., and that she believed T.R. was psychologically and  
20    physically dependent on marijuana. Dr. Powers made it clear to respondent that as a  
21    psychiatrist she believed T.R.'s use of marijuana was causing him grave harm. Respondent  
22    disagreed with Dr. Powers, stating that marijuana was helping T.R. Dr. Powers advised  
23    respondent that, at a minimum, she needed to more closely monitor T.R., and that she really  
24    needed to advise T.R. to stop using marijuana. Dr. Powers also informed respondent that  
25    T.R. had authorized her to release his records to respondent, but respondent never  
26    requested those records. Dr. Powers attempted to contact respondent on several more  
27    occasions, but was unable to reach respondent.

1 I. On or about September 15, 2005, T.R. committed suicide by hanging  
2 himself.

3 13. Respondent's conduct, as described above, constitutes unprofessional  
4 conduct and represents extreme and/or simple departures from the standard of care, and/or acts of  
5 incompetence in that respondent committed errors and omissions in the care and treatment of  
6 Patient T.R., including but not limited to the following:

7 A. Respondent failed to completely and adequately evaluate T.R.'s complaints  
8 of depression, anxiety and insomnia by means of an adequate history and physical  
9 examination, including a neurological examination, and/or mental status examination;

10 B. Respondent failed to formulate and document a comprehensive or  
11 meaningful treatment plan for T.R., failed to consider or incorporate into her  
12 treatment plan T.R.'s medical records and history after she obtained that information, and  
13 failed to incorporate into her treatment plan any ongoing evaluation of side effects such as  
14 tolerance and dependence.

15 C. Respondent failed to consider, or to discuss with T.R., the possible side  
16 effects of marijuana on T.R.'s mental status, and failed to adequately discuss with her  
17 patient the risks and benefits of marijuana;

18 D. Respondent failed to adequately monitor T.R. for the development of known  
19 possible side effects of marijuana use.

20 E. After respondent consulted with T.R.'s treating psychiatrist, she failed to  
21 take adequate steps to educate herself regarding the possible impact of marijuana use on  
22 T.R.;

23 F. Respondent failed to adequately consult with T.R.'s treating physician(s),  
24 To the extent she did consult with Dr. Powers, and to the extent she did obtain prior  
25 treatment records for T.R., respondent failed to consider or incorporate the information she  
26 obtained into her treatment plan.

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